

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #11	CCRB Case #: 201509514	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 11/01/2015 1:04 AM	Location of Incident: Grant Avenue and Fulton Street	Precinct: 75	18 Mo. SOL 5/1/2017	EO SOL 5/1/2017	
Date/Time CV Reported Sun, 11/01/2015 2:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/09/2015 11:05 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christian Salazar	22478	951195	075 PCT
2. POM Melchor Alban	08328	939851	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Henry Daverin	03631	945645	075 PCT
2. SGT Richard Elliott	1665	941009	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christian Salazar	Abuse: PO Christian Salazar stopped § 87(2)(b)	
B.POM Melchor Alban	Abuse: PO Melchor Alban stopped § 87(2)(b)	
C.POM Melchor Alban	Force: PO Melchor Alban used a chokehold against § 87(2)(b)	
D.POM Melchor Alban	Force: PO Melchor Alban restricted § 87(2)(b)'s breathing.	
E.POM Melchor Alban	Force: PO Melchor Alban struck § 87(2)(b) with an asp.	
F.POM Christian Salazar	Force: PO Christian Salazar used physical force against § 87(2)(b)	

Case Summary

On November 1, 2015, at approximately 1:04 a.m., at Grant Avenue and Fulton Street in Brooklyn, § 87(2)(b) was stopped by PO Christian Salazar and PO Melchor Alban of the 75th Precinct (**Allegations A and B**). PO Salazar issued § 87(2)(b) a summons for urinating in public. § 87(2)(b) threw the summons onto the sidewalk and turned to walk away from the officers. PO Alban allegedly placed his arm around the front of § 87(2)(b)'s neck and pulled him to the ground, allegedly causing his breathing to be restricted (**Allegations C and D**). PO Alban allegedly hit § 87(2)(b) on the forehead with his asp (**Allegation E**). PO Salazar allegedly kicked § 87(2)(b) on the left side of his ribs approximately ten times (**Allegation F**). PO Alban hit § 87(2)(b) on the hand with his asp (subsumed in **Allegation E**). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

There is no video footage in this case. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because § 87(2)(b) is pursuing a lawsuit (Board Review 13).
- § 87(2)(b) filed a Notice of Claim for an unspecified amount in regard to this incident (Board Review 13).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB case (Board Review 14).
- § 87(2)(b)
- PO Salazar has been a member of service for four years. He has four total allegations in two cases (including this one). In his only case prior to this one, number 201206387, physical force and blunt instrument as a club allegations were closed as Victim Uncooperative.
- PO Alban has been a member of service for ten years. He has six total allegations in three cases (including this one). He has no prior substantiations. In case 201110686, a physical force allegation was exonerated, and in case 201403205, a nightstick as club allegation was closed as Complainant Uncooperative.

Potential Issues

- § 87(2)(b) an independent witness who filed this complaint with IAB via telephone immediately following the incident, did not provide a sworn statement to the CCRB (Board Review 24).

- § 87(2)(b) one of § 87(2)(b)'s cousins who also witnessed the incident, did not provide a sworn statement to the CCRB, even after a field interview was scheduled (Board Review 24).
- The investigation was unable to establish contact with § 87(2)(b) one of § 87(2)(b)'s cousins who witnessed the incident (Board Review 24).

Findings and Recommendations

Allegations not pleaded

- A refusal to provide medical attention allegation was not pleaded because the investigation determined that § 87(2)(b) was taken to § 87(2)(b) Hospital shortly after arriving at the 75th Precinct station house (Board Review 17 for Unusual Occurrence Report; Privileged Documents).

Allegation A –Abuse of Authority: PO Christian Salazar stopped § 87(2)(b)

Allegation B –Abuse of Authority: PO Melchor Alban stopped § 87(2)(b)

It is undisputed that PO Salazar and PO Alban stopped § 87(2)(b). § 87(2)(b) stated that he parked on the northeast corner of Grant Avenue and Fulton Street. He was returning from his friend's house and was planning to walk to his apartment, which was approximately a quarter-block from where he parked. He exited his vehicle, walked to the front passenger side, and opened the door. He was looking for the pills that are prescribed to him for his back pain. As he searched for the pill bottle on the floor of the front passenger seat, another vehicle pulled up behind him. PO Salazar and PO Alban approached § 87(2)(b) where he was standing on the passenger side of the vehicle. The officers asked for his identification, and § 87(2)(b) said, "Why do you need it?" PO Alban said, "I saw you peeing on the side of your car." § 87(2)(b) told PO Alban that he did not urinate outside. PO Alban asked § 87(2)(b) for his identification a second time, and § 87(2)(b) provided it. § 87(2)(b) never urinated outside (Board Review 1).

§ 87(2)(b) stated to medical personnel at § 87(2)(b) Hospital that "he was in his car, got out, and was fixing his jeans when police came up to him to arrest him for urinating in street. He denies attempting to urinate" (Privileged Documents).

PO Salazar stated that he was driving the unmarked police vehicle when he first noticed § 87(2)(b) standing on the sidewalk on the opposite side of the street, behind a row of parked vehicles. PO Salazar estimated that § 87(2)(b) was approximately 15 feet away from him when he first observed him. When PO Salazar saw § 87(2)(b) he wanted to investigate to make sure that § 87(2)(b) was not breaking in to one of the parked vehicles. His suspicion was based on the fact that he was in "a desolate area, he was looking around, and was acting very suspicious at the moment." PO Salazar did not recall if any of the doors of the vehicle were open when he first saw § 87(2)(b) or what position § 87(2)(b) was in—sitting, standing, crouching, or in some other position. PO Salazar and PO Alban noticed § 87(2)(b) simultaneously. PO Salazar did a quick U-turn, parked, and exited the vehicle. PO Salazar estimated he was three to four feet from § 87(2)(b) when he exited the vehicle. § 87(2)(b) was adjusting his pants and his zipper was lowered. PO Salazar smelled urine and saw that the back wheel of the vehicle was wet. PO Salazar acknowledged that the lighting in the area was poor, as the area is semi-deserted, except for a dance club located on the southeast corner of Grant Avenue and Fulton Street (Board Review 7). PO Salazar stated in the summons for public urination that he observed § 87(2)(b) urinate on a public sidewalk (Board Review 25).

PO Alban stated that he saw “some movement” on the sidewalk, and he looked and saw § 87(2)(b) urinating on a minivan 15-20 feet away from him, on the other side of the street. PO Alban said that his attention was brought to § 87(2)(b) because he was standing on the sidewalk, leaning on the van, and appeared to be urinating. His view of § 87(2)(b) was not obstructed. PO Alban said that there was light coming from street lights in the area, but there are trees that obscure some of the lighting. PO Alban noticed that one of the tires was wet, as well as the ground near the tire (Board Review 8).

§ 87(2)(g)

Allegation C –Force: PO Melchor Alban used a chokehold against § 87(2)(b)

Allegation D –Force: PO Melchor Alban restricted § 87(2)(b) s breathing.

Allegation E –Force: PO Melchor Alban struck § 87(2)(b) with an asp.

Allegation F –Force: PO Christian Salazar used physical force against § 87(2)(b)

It is undisputed that PO Alban struck § 87(2)(b) on the hand with an asp.

§ 87(2)(b) is a § 87(2)(b) Hispanic male who § 87(2)(b) § 87(2)(b) stated that after the officers handed him the summons for public urination, he threw it onto the sidewalk. He turned away from the officers to walk away. § 87(2)(b) never squared off or clenched his fists. PO Salazar placed his arm § 87(2)(b) could not recall which arm, but he was certain it was an arm) around the front of § 87(2)(b) s neck and pulled him to the ground. No officer said anything to § 87(2)(b) before he placed the arm around his neck. § 87(2)(b) fell onto his right side. PO Salazar’s arm was still around his neck, and he was applying pressure to the side of his neck to keep him on the ground. The arm was tight around his neck and he could not breathe. § 87(2)(b) s breathing was restricted from the moment that PO Salazar placed his arm around his neck. While § 87(2)(b) was on the ground, he was hit in the forehead, above his right eye, with what § 87(2)(b) believed to be a flashlight. § 87(2)(b) believed it was a flashlight because it was a heavy instrument. PO Salazar then kicked § 87(2)(b) in the left side of his ribcage and in the face. § 87(2)(b) estimated that PO Salazar kicked him in the ribs more than ten times. § 87(2)(b) repeatedly asked PO Salazar to stop kicking him. § 87(2)(b) s dentures had fallen out of his mouth when he fell, and while he was on the ground, he retrieved them with his left hand and held them tightly in a fist. § 87(2)(b) also stated that it was possible he had his prescription pill bottle in his hand. The officers repeatedly told him to open his hand. § 87(2)(b) asked why he needed to open his hand, because he did not have a gun, a grenade, or anything dangerous. PO Alban hit § 87(2)(b) on the top of his knuckles with what § 87(2)(b) thought was a flashlight (Board Review 23 for photograph). § 87(2)(b) never offered any physical resistance at any point. He never tensed his arms or refused to place his hands behind his back. He never placed his hands underneath his body; his hands were extended in front of him the entire time he was on the ground. § 87(2)(b) never kicked his legs. While § 87(2)(b) was on the ground, people from a nightclub located at the intersection started to gather and watch what the officers were doing (Board Review 1).

§ 87(2)(b) s medical records note that his chief complaints were pain to his forehead, a headache, and pain to his left rib. He was diagnosed with a “Traumatic ecchymosis” (swollen bruise) on his forehead (Board Reviews 21 and 22 for photographs) and a bruised lower left rib.

He was administered Ibuprofen for his pain. § 87(2)(b) complained that he was “assaulted by NYPD after he resisted arrest for questionable urinating on street. Per patient, he was in his car, got out, and was fixing his jeans when police came up to him to arrest him for urinating in street. Patient denies attempting to urinate and was resisting arrest when the NYPD struck him with a flashlight and he went down on ground. NYPD then proceeded to kick his left side of rib.” It was noted that § 87(2)(b) acknowledged drinking one beer that day and did not appear intoxicated (Privileged Documents).

§ 87(2)(b) who called 911 almost immediately after the incident, stated that she was walking past Grant Avenue and Fulton Street when she saw PO Alban and PO Salazar standing next to § 87(2)(b) a male who was unknown to her. The officers were kicking § 87(2)(b) “in the kidneys and in the chest” repeatedly. § 87(2)(b) approached § 87(2)(b) because she was worried that he was going to have a seizure because of how they were kicking him. The officers told § 87(2)(b) to “Go away” (Board Review 2 for 911 recording; Board Review 11 for transcription).

§ 87(2)(b) stated in her phone statement that she and her cousins, § 87(2)(b) and § 87(2)(b) were walking home from a Halloween party when they saw § 87(2)(b) who was unknown to all of them, lying on his side in handcuffs. PO Salazar was kicking § 87(2)(b) in the stomach, chest, and face. § 87(2)(b) was screaming for help. § 87(2)(b) wanted to mind her own business, but she could not, because of how loudly § 87(2)(b) was screaming. § 87(2)(b) approached the officers. PO Salazar stopped kicking § 87(2)(b) when he noticed that § 87(2)(b) and § 87(2)(b) were watching. PO Salazar told § 87(2)(b) “Go away! Go away!” § 87(2)(b) said, “Officer, he’s screaming! He might have a convulsion and go into a seizure.” PO Salazar told her again to go away. § 87(2)(b) said that she was a medical student and § 87(2)(b) was screaming for help. § 87(2)(b) screamed, “Mami! Help me! My chest!” to § 87(2)(b). PO Salazar did not say anything else to § 87(2)(b). § 87(2)(b) estimated she was at the scene for approximately five minutes. She saw PO Salazar kick § 87(2)(b) approximately four to six times (Board Review 3).

§ 87(2)(b) corroborated § 87(2)(b) in his phone statement in regard to PO Salazar kicking § 87(2)(b). He added that PO Alban was holding § 87(2)(b) down while PO Salazar was kicking him (Board Review 4).

In the police radio communications from this incident, § 87(2)(b) is heard in the background, screaming. “Oh my God! Stop!” in English. The officers request a supervisor and state that it is not an emergency situation (Board Review 5 for audio; Board Review 6 for transcription).

PO Salazar stated that prior to handing § 87(2)(b) the summons, § 87(2)(b)’s demeanor was normal. PO Salazar handed the summons to § 87(2)(b) and § 87(2)(b) accepted it. § 87(2)(b) then said, “No, no, no,” and threw the summons in the officers’ direction. The summons landed on the sidewalk and never made contact with an officer. Immediately after § 87(2)(b) threw the summons, § 87(2)(b) bladed his body and put up his fists. PO Salazar thought that § 87(2)(b) was going to hit the officers because he was in a boxing stance. PO Salazar was three or four feet from § 87(2)(b) and PO Alban was approximately two feet from § 87(2)(b). Both PO Salazar and PO Alban “bear-hugged” § 87(2)(b) to prevent him from swinging at the officers. § 87(2)(b) started to struggle once the officers grabbed him. PO Alban and PO Salazar struggled with § 87(2)(b) while he was standing for 30 seconds before they all fell to the floor. For those 30 seconds, the officers were struggling to bring him down so they could handcuff him. § 87(2)(b) “was trying to flail his arms and get them out” from underneath the officers’ arms. PO Salazar acknowledged that § 87(2)(b)

§ 87(2)(b)'s arms were pinned down by the officers' bear hug, but § 87(2)(b) was "trying to throw elbows." He then said that § 87(2)(b)'s arms were crossed in front of his chest when the officers placed him in a bear hug, and his arms "managed to slip out." § 87(2)(b) continued to fight the officers.

PO Salazar did not know how they ended up on the ground. He thought that § 87(2)(b) might have tripped, causing the officers to fall with him. The officers and § 87(2)(b) landed on their sides. PO Salazar described what occurred on the ground as a "wrestling match." § 87(2)(b) was trying to pull his arms away from the officers. PO Salazar was trying to stand up from the ground so that he could place § 87(2)(b) in handcuffs. PO Salazar first acknowledged that he may have been applying downward pressure on § 87(2)(b)'s back, but then stated he could not recall. PO Salazar never made any contact with § 87(2)(b)'s neck, and he never saw PO Alban make contact with his neck. PO Salazar never heard § 87(2)(b) complain that he could not breathe. PO Salazar thought that they were only struggling with § 87(2)(b) on the ground for approximately 10 to 15 seconds. PO Salazar managed to cuff one hand, and then pulled it toward the other arm, and placed that arm in handcuffs. § 87(2)(b) was never told to open his hands, and he did not recall § 87(2)(b) having anything in his hand. The only command PO Salazar recalled was "Stop resisting." § 87(2)(b) did not respond to this command, and continued "moving his arms, screaming, kicking, and throwing elbows."

PO Salazar first stated that at the station house, he completed a Medical Treatment of Prisoner Form (MTPR) "for § 87(2)(b)'s bruises." Upon viewing the MTPR, which states that § 87(2)(b) sustained a contusion to his head, PO Salazar stated that he did not prepare it, and that he thought PO Alban prepared it (Board Review 20). PO Salazar then said that he did fill out an MTPR, but he had "left something out—possibly the date," so an officer (he could not recall which one) had to redo it for him. When asked where § 87(2)(b)'s bruises were, PO Salazar said, "I know he had something on his head. I don't remember where, but I know he had a contusion on his head." When asked how § 87(2)(b) sustained that injury, PO Salazar said that he thought it was from the fall. When asked what made him think that the fall caused the contusion, he said, "That's the only way I can assume that he got it." PO Salazar did not see § 87(2)(b)'s head make any contact with anything during the fall. Nothing besides the fall could have led to § 87(2)(b) sustaining an injury to his head. Neither officer sustained any injuries during the incident. PO Salazar did not notice § 87(2)(b)'s bruise until he was at the station house. PO Salazar denied hitting § 87(2)(b) in the head with any sort of instrument, and never saw PO Alban hit him with any sort of instrument. PO Salazar denied hitting § 87(2)(b) in the hand, and he never saw PO Alban do this. Neither officer ever had their batons or flashlights out. When asked if he ever kicked § 87(2)(b) PO Salazar stated that he did not recall. When asked if he ever kicked § 87(2)(b) in the ribs, PO Salazar said that he did not recall (Board Review 7).

PO Alban corroborated PO Salazar's testimony regarding § 87(2)(b) throwing the summons, blading his body, and clenching his fists. § 87(2)(b)'s fists were at waist-level when he assumed a fighting stance. PO Alban immediately grabbed both of § 87(2)(b)'s wrists to prevent him from hitting him, and said something to the effect of, "You don't want to do this. It's just a summons. Relax." § 87(2)(b) replied, "Get the fuck off of me," and, "I didn't do anything." PO Alban thought § 87(2)(b) was intoxicated because of his aggressive demeanor and smell of alcohol on his breath. § 87(2)(b) moved his arms to try and get PO Alban off of him, and tried to raise his fists. PO Alban hugged § 87(2)(b) to prevent him from hitting him. PO Alban stated that he did not just walk away from § 87(2)(b) after the summons was issued because he thought § 87(2)(b) was going to hit him. He denied taking him to the ground and arresting him because he was angry

that he threw the summons. PO Alban could not recall how they ended up on the ground. PO Alban said that either § 87(2)(b) tripped and brought the officers down with him, or vice-versa. PO Alban estimated that he was struggling with § 87(2)(b) while he was standing up for ten to fifteen seconds before they went to the ground.

Once they were on the ground, PO Alban grabbed on to § 87(2)(b)'s right arm, and he said, "My man, put your arms behind your back." § 87(2)(b) replied, "Get off of me! Fuck you!" § 87(2)(b)'s elbow was on PO Alban's chest, and he was trying to push off of PO Alban to stand. PO Alban told § 87(2)(b) to relax. § 87(2)(b)'s right hand was clenched in a fist, pushing against the ground, and PO Alban grabbed the only thing he could reach—his asp—and he tapped § 87(2)(b) two or three times on the knuckles of his right hand. PO Alban stated that he was on the ground, pulling on § 87(2)(b)'s arm for approximately 20 seconds before he took out his asp. PO Alban explained that he did not pepper spray § 87(2)(b) at that point because he was so close to him, and any spray would have bounced back at PO Alban. After PO Alban tapped him on the hand, § 87(2)(b) said, "All right, all right," and allowed PO Alban to bring his right arm behind his back. PO Alban estimated that ten seconds passed between when he tapped § 87(2)(b) with his asp and when § 87(2)(b) was successfully handcuffed. PO Alban stated that he did not tell § 87(2)(b) to open up his fists, or release what he had in his hand; PO Alban did not see any object inside of his hand. PO Alban denied ever making contact with § 87(2)(b)'s neck, and he never saw PO Salazar make any contact with § 87(2)(b)'s neck. § 87(2)(b) never complained that he could not breathe. PO Alban denied hitting § 87(2)(b) in the forehead with any object, and he never saw PO Salazar do this. He never kicked § 87(2)(b) and he never saw PO Salazar do this. He never learned that an officer had kicked § 87(2)(b).

PO Alban was shown § 87(2)(b)'s arrest photograph, and he said that he never saw the contusion on § 87(2)(b)'s forehead (Board Review 18). § 87(2)(b) could have sustained this injury when he fell to the ground; PO Alban said that he thought this was a possibility because he never punched or hit § 87(2)(b) in the face. PO Alban did not see § 87(2)(b)'s face make contact with the ground. He stated that he never saw any injury that § 87(2)(b) sustained from when PO Alban used his asp on his hand. PO Alban stated that the asp never broke the skin on § 87(2)(b)'s hand. When PO Alban was shown the photograph of the scabs on § 87(2)(b)'s right hand (Board Review 23), and he said that he never saw those injuries, and he did not know how he sustained those injuries (Board Review 8).

Sgt. Henry Daverin of the 75th Precinct, who was working as a patrol sergeant during the incident, stated that § 87(2)(b) had already left the scene by the time he arrived at the scene. PO Alban and PO Salazar were still at the scene, and they told Sgt. Daverin that they had arrested § 87(2)(b) because he had urinated in public and then attempted to fight the officers. The officers did not tell Sgt. Daverin any other details about how he had menaced or attempted to fight them. No one told Sgt. Daverin at the scene that § 87(2)(b) had sustained any injuries. No officer told Sgt. Daverin that he had hit § 87(2)(b) with an asp or a flashlight at the scene. Sgt. Daverin returned to the 75th Precinct station house, where he saw § 87(2)(b). Sgt. Daverin stated that he did not recall seeing any injury on § 87(2)(b). The Command Log was shown to Sgt. Daverin, and he noted that under "Physical/Mental Condition," "Laceration to forehead," was written (Board Review 16). Sgt. Daverin acknowledged writing this, but neither this entry nor § 87(2)(b)'s arrest photo prompted his memory of seeing the contusion. He did not know how § 87(2)(b) eventually ended up going to the hospital, as he did not hear § 87(2)(b) complaining of injuries, and he did not recall if another officer told him that § 87(2)(b) wanted medical attention (Board Review 10).

Sgt. Richard Elliott of the 75th Precinct, the desk sergeant during the incident, did not recall seeing § 87(2)(b) or his injuries (Board Review 9).

The Unusual Occurrence Report (UF49) prepared by Captain Ahmad Othman, Duty Captain during the incident, stated that " Upon issuance of criminal court summons, § 87(2)(b) refused to accept the summons stating, 'I don't want a fucking ticket,' before throwing the summons to the floor and approaching officers in a fighting stance with clenched fists. PO Alban and PO Salazar attempted to take § 87(2)(b) into custody for Menacing and various additional charges, at which point § 87(2)(b) actively resisted arrest by flexing his arms and kicking his legs in an attempt to remain uncuffed. PO Alban and PO Salazar broadcast a 10-85 over division radio, and numerous units responded to the scene to render assistance, including Sgt. Daverin, who verified the arrest. § 87(2)(b) was removed to the 75th Precinct...and was observed to have a contusion above the right eye. At this time, the perpetrator made no complaints of pain. At approximately 3:30 a.m., § 87(2)(b) complained of pain, and Sgt. Elliot requested EMS to transport § 87(2)(b) to § 87(2)(b) Hospital to be treated. § 87(2)(b) was treated by Dr. D'Alexander for a contusion above the right eye and pain to the abdomen...The injury sustained is consistent with resisting arrest and is not serious in nature" (Board Review 17).

Patrol Guide procedure 203-11 prohibits the use of force beyond what is necessary to overcome resistance (Board Review 19).

§ 87(2)(g)

§ 87(2)(b)'s statements to medical personnel regarding being hit in the head and kicked in the ribs were consistent with his CCRB testimony. Additionally, the medical records documented a forehead contusion and bruising to his ribs.

PO Alban acknowledged having his asp out, and hitting § 87(2)(b) on the hand with his asp. PO Alban denied seeing the contusion to § 87(2)(b)'s forehead at any point, despite the fact that it was documented in the Command Log, the Unusual Occurrence Report, the Medical Treatment of Prisoner Report, and is visible in his arrest photo. PO Salazar acknowledged seeing the contusion, but like PO Alban, he had no plausible explanation for how this injury occurred. Both officers stated that § 87(2)(b) could have sustained the injury when he fell to the ground, but this explanation was not credited, as no individual stated that § 87(2)(b) fell on his face. Additionally, the officers, who fell with § 87(2)(b) to the ground, did not sustain any injuries during the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) The photographs § 87(2)(b) provided are of his right hand. § 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].

Squad: 11

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date